

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Carol J. Macdonald,

No. C 03-03538 JW

Plaintiff(s),

v.

**ORDER FOLLOWING PRELIMINARY  
PRETRIAL CONFERENCE**

Zurich Life Insurance Company of America,  
et al.,

Defendant(s).

On Monday, June 6, 2005, the Court conducted a preliminary pretrial conference. The Court orders the parties to comply with the following:

A. Meet and Confer Requirement

1. On or before Wednesday, October 12, 2005, the parties shall meet and confer with respect to the Joint Pretrial Conference Statement, submission of a joint list of witnesses, a joint list of trial exhibits and a joint list of discovery material which each party intends to offer in evidence as a part of its case-in-chief. Unless objections are made in accord with this Order, all witnesses, exhibits and discovery material contained on the joint submission shall be deemed admissible into evidence by stipulation.

B. Objections and Lodging Disputed Material with the Court

2. If a party objects to receipt into evidence of a witness, exhibits or discovery response, the party shall advise all opposing parties during the conference and attempt to resolve the dispute. If the parties are unsuccessful in resolving the dispute, any party wishing to object to receipt of the testimony of any witness, any exhibit or discovery response into evidence shall lodge with Chambers

1 a copy of the disputed material on or before Friday, October 21, 2005, together with a brief statement  
2 of the objection and any response by the proffering party. The Court will indicate on the submitted  
3 copy whether the objection is overruled or sustained and return the material to counsel.

4 C. Lodging Joint Pretrial Conference Statement and *In Limine* Motions

5 3. On or before Friday, October 21, 2005, the parties shall file and lodge with Chambers  
6 the following:

7 a. Joint Pretrial Conference Statement: The parties shall file a joint pretrial  
8 statement which shall contain the following information: (1) a brief description of the  
9 substance of each claim which remains to be decided (the description must list the  
10 essential elements which the party contends it must prove in order to prevail on each  
11 claim); (2) as to each claim, a detailed statement of all the relief requested, particularly  
12 itemizing the amount of damages being requested; (3) as to each claim, a description of  
13 each defense which is being asserted; (4) a plain and concise statement of any relevant  
14 facts not disputed to which the parties stipulate; (5) a list of all fact witnesses likely to  
15 be called at trial, other than solely for impeachment or rebuttal; (6) a list of all expert  
16 witnesses and the field of expertise in which the witness is tendered as an expert; (7)  
17 an estimate of the number of hours needed for the presentation of each party's case; and  
18 (8) any other subjects relevant to the trial of the action, or material to its just, speedy  
19 and inexpensive determination.

20 Counsel are directed to meet and confer in advance of the date for submission  
21 of pretrial material with respect to the pretrial conference statement.

22 b. *In Limine* Motions: Any *In limine* motions shall be filed in writing and  
23 submitted along with the Joint Final Pretrial Conference Statement. Any opposition  
24 shall be filed in writing and served on or before Friday, November 11, 2005. These  
25 motions will be deemed submitted without oral argument, unless the Court orders  
26 otherwise.

27 D. Final Pretrial Conference

1           4.       The Court will conduct a Final Pretrial Conference with the parties on Monday,  
2 November 21, 2005 at 3:30 p.m. The trial attorneys must attend the conference. At the final pretrial  
3 conference the Court will consider issues raised in the Final Pretrial Conference Statement, motions *in*  
4 *limine* and discuss the procedures for trial of the case.

5                   E. Lodging Witness Lists, Exhibit Lists and Proposed Jury Instructions

6           5.       On Tuesday, December 6, 2005, the parties shall lodge with Chambers the joint list of  
7 witnesses, and a joint list of exhibits. Unless otherwise ordered, all exhibits shall be in a format  
8 compatible with either the video or digital evidence presentation system utilized by the Court. The  
9 proffering party shall retain custody of all exhibits, schedules, summaries, diagrams or charts to be  
10 used at the trial.

11          6.       Upon request, in noncomplex cases the Court will excuse the parties from using  
12 electronic formatted documents. In that event on the first day of trial, the parties shall submit exhibits  
13 as follows:

14                   a. A copy for the trial judge;

15                   b. A copy for the witness stand. The Court prefers the parties to prepare a binder for  
16 each witness, which contains only those documents pertinent to that witness.

17                   c. No duplicates of a document shall be submitted, unless the duplicate copy has  
18 independent evidentiary value to prove some disputed issue of material fact (e.g., date stamp to prove  
19 receipt on a particular date, where date of receipt is a disputed issue of a material fact).

20          7.       At the Final Pretrial Conference, the parties shall submit proposed jury instructions and  
21 verdict forms on both hard copy and disk format. The Court will give the preliminary instructions  
22 contained in the Model Jury Instructions of the Ninth Circuit at the beginning of the trial and will give  
23 the standard closing instructions Model Jury Instructions of the Ninth Circuit prior to closing argument.  
24 The parties need not submit preliminary or introductory closing instructions, unless they wish the  
25 Court to consider giving a particular instruction.

26          8.       If the parties are unable to agree on a particular substantive instruction, the set of  
27 instructions submitted by the parties shall contain each party's version of the contested instruction  
28

1 containing a citation of authority for the instruction.

2 F. Proposed Findings (Nonjury Trials)

3 9. In nonjury trials, on the first day of trial, each party shall submit its proposed findings  
4 of fact and conclusions of law.

5 G. Trial Schedule

6 10. Pursuant to stipulation, the trial schedule for this case will be as follows: December 6,  
7 7, 8, 9, 2005. On December 6, 2005, the parties shall conduct jury selection from 9:00 a.m. to 12:00  
8 p.m. Trial proceedings shall begin in full on December 6, 2005 from 1:00 p.m. to 4:00 p.m. The trial  
9 proceedings on December 7, 8, and 9 are scheduled from 1:00 p.m. to 4:00 p.m. The parties shall  
10 argue and submit their cases on December 9.

11 NOTE: This schedule assumes that this Court will have a separate (and unrelated) criminal  
12 trial to conduct on the mornings of December 7, 8, and 9. If it turns out that this Court will not need to  
13 conduct a criminal trial on those days, the trial proceedings in this case shall run from 9:00 a.m. to  
14 4:00 p.m. on December 7 and 8. In that situation, the parties shall argue and submit their case on  
15 December 8.

16 11. The time allowed for trial shall be divided equally between the plaintiff's side and the  
17 defendant's side. Co-parties are ordered to meet, confer and agree to an allocation among themselves.  
18 A party may spend its allocated time presenting its own case or on cross-examination of witnesses  
19 called by other parties or for presentation of a counterclaim. When a party's allocated time period has  
20 expired, unless otherwise ordered for good cause shown, no further time will be allowed to that party  
21 if it would interfere with the ability of the opposing party to present its case.

22 H. Alternative Dispute Resolution

23 12. As a final matter, the parties shall, by Friday, July 29, 2005, notify the Court by Joint  
24 Statement as to the alternative dispute resolution mechanism they have selected.

25 Dated: June 9, 2005

26 /s/James Ware  
JAMES WARE  
United States District Judge

27 03eciv3538pptc

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Edward M. Bull [ebull@banningmicklow.com](mailto:ebull@banningmicklow.com)  
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8 **Dated: June 9, 2005**

**Richard W. Wieking, Clerk**

9 **By: /s/JWchambers**

**Ronald L. Davis**  
**Courtroom Deputy**